IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4234 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALAJI MOTIJI KHANT

Versus

COLLECTOR OF SABARKANTHA

Appearance:

MR RN SHAH for Petitioners

Mr.K.P.Raval, ASSTT GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 22/12/2000

ORAL JUDGEMENT

The petitioners filed the present petition being aggrieved of the order passed by the Deputy Secretary, Revenue Department [Appeal] whereby the order of the Collector, Sabarkantha dated 27/5/1991 was confirmed.

2. It appears that the Court issued notice on 24/6/1992 making it returnable on9/7/1992. As is recorded in the order dated 21/7/1992 inspite of service of notice, nobody appeared on behalf of the respondent. Hence, the Court passed an order which reads as under:-

" Rule.
Inspite of service of notice, nobody appears on behalf of the respondent."

Today, when the matter is called out,learened Asstt. Govt. Pleader, Mr.K.P.Raval invited attention of the court to the order passed by the Deputy Secretary, Revenue Department[Appeal] which is produced at Annexure 'C' to the petition. It is specifically mentioned in the order that there is no provision for filing an appeal against the order of the Collector, but in the interest of justice, the application filed by the present petitioners was taken as a revision application and the same was fixed for hearing on 17/7/1991. Subsequently, hearing took place on 29/10/1991 wherein learned advocate for the petitioners was present and submitted that the distance between Sarupur and Kokapur is less than 4 kms. and the certificate issued by the Deputy Executive Engineer, Modasa is produced on record to establish that fact. It was the case of the petitioners that they were cultivating the land in question prior to 1970 and as the land in question is at a distance of about 2 kms and they were old aged, i.e.above 60 years, they were not able to cultivate the land in question. On the other hand, the person who is to purchase this land is holding land bearing Block No.87 and the land in question bears block No.88 which is adjoining to that.

3. The authority has examined various aspects of the matter and has noted that block No.88 admeasuring 7 acres 37 gunthas was allotted to one Shri Motiji Ranchhodji Khant as a new tenure land and on his expiry, the land in question came to his heirs, namely, Kalaji Motiji Khant and Jawanji Motiji Khant, who are the present petitioners. Copies of village Form No.7/12 for 1957-58 to 1990-91 are produced and it is recorded in those documents that the petitioners were cultivating the land in question. A copy of village form No.8 A is also produced from which it is clear that the petitioners are holding the land bearing survey No.43 and 45 admeasuring 12 acres, 21 gunthas. Looking to the account of Jawanji Motiji the land bearing survey no.42 admeasuring 3 acres 29 gunthas belongs to him. The authority further records that on perusal of ration card of the petitioners it is found that there are in all 10 members in the family of the petitioners. A statement was recorded on 14/12/1990 of the petitioners in which they have stated that the

land in question is situated 2 kms away from their residence and therefore, they are not able to cultivate the land in time and therefore, they are getting less yield. That their social debts have increased and therefore, they have sought permission to sell this land. That they have not executed any Banakhat or document and the land was sold only after permission is received. The authority has then recorded that the land was given as a new tenure land to the petitioners for their personal cultivation and the submission regarding the land being at a distance from the place of residence cannot be accepted in light of the fact that since 57 years the petitioners continued to cultivate the land in question. If the distancee was really a problem, they could have agitated about the same at the time of grant of land. If the person who is granted land, does not want to cultivate the same then, he is required to surrender the same to the authorities. If the land allotted to persons for personal cultivation is permitted to be sold like this, then the object behind such grant gets frustrated. It is also recorded by the authorities that the petitioners are not so old or otherwise incapable that they are not able to cultivate the land of their owners through their heirs. It is also not their case that they are shifting to some other place by leaving the profession of agriculturists. In view of the above discussion, the authorities did not deem it fit to grant permission for sale and ultimately held that the Collector's order refusing permission is just and proper and no interference is warranted.

4. On perusal of the papers, this court does not find any ground on which an interference is called for. Hence, the petition is rejected. Rule is discharged. No order as to costs.

22nd December,2000 [Ravi R.Tripathi,J]
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